HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITON NO. 4413 OF 2004.

Baban Govind Gujar & Others. ..Petitioners.
Versus.
Gopal Maruti Gujar & others. ..Respondents.

Shri. Vijay G. Peshave for the petitioners.
P. M. Mengane for the respondent nos. 1 & 2.

CORAM: S.B.MHASE,J.

DATE : AUGUST 9, 2006.

P.C.

1. Heard learned counsel for both sides. Learned counsel Shri. Vijay G. Peshave appearing on behalf of the petitioner states that against the order passed by the trial Court, wherein the parties to the suit were directed to maintain status quo till final decision of the suit, the appellate Court has granted injunction, which is not permissible for the appellate Court and that too in an interim matter, by invoking provisions of Order-41 Rule 33 of the Code of Civil Procedure. He relied upon a Division Bench judgment of this Court in the matter of Shankarrao Jadhav and others v/s. Kabalsing Garmilsing Sardarji & others (AIR-1985 BOMBAY 357). He submitted that the property is a joint family property of which no partition has taken place. Therefore, injunction as against the

co-owner cannot be granted. Learned counsel for the respondent submitted that in fact the appeal itself was incompetent, because order of status quo was passed under section 151 of the Code of Civil Procedure and that he is satisfied with the order passed by the trial Court and he has no objection for setting aside the order passed by the appellate Court.

2. Taking into consideration overall view of the matter and to avoid further observations on merit at this interim stage, this Court finds it appropriate to dispose of the matter in the above referred circumstances and concessions given.

3. It is well established principle that order of status quo can be passed only under section 151 of the Code of Civil Procedure and not under Order-39. Therefore, appeal under Order - 43 of the Code was incompetent. In the result, order passed by the IIIrd Extra Joint District Judge, Pune was without jurisdiction. Therefore, learned counsel for the respondent has rightly submitted that he is satisfied with the order passed by the trial Court and he has no objection for setting aside the order passed by the appellate Court. Therefore, writ petition is partly

allowed. The order passed by the IIIrd Extra Joint District Judge, Pune on 1.3.2004 in Miscellaneous Civil Appeal No. 26 of 2001 is hereby set aside, and instead, the order passed by the Joint Civil Judge, Junior Division, Pune on 20.11.2000 is maintained till the final disposal of the suit.

4. The hearing of the suit in trial Court is expedited. Trial Court is directed to dispose of the suit as early as possible, preferably within a period of one year from the date of receipt of writ of this order.

5. With these directions petition is disposed of.

(S.B.MHASE, J.)

:sac/2006/single.